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IN THE SUPREME COURT OF FLORIDA
APPEAL NO. SC02-198
SECOND DISTRICT COURT OF APPEAL NO. 00-4027

VERON CARAVAKIS,

Plaintiff/Petitioner,

-v-

ALLSTATE INDEMNITY COMPANY,
a foreign corporation authorized to
do business in the State of Florida,

Defendant/Respondent.
_____/

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**PLAINTIFF/PETITIONER'S AMENDED BRIEF ON JURISDICTION**

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**PLAINTIFF/PETITIONER'S AMENDED BRIEF ON JURISDICTION**

COMES NOW, VERON CARAVAKIS, Plaintiff/Petitioner, by and through his undersigned counsel and pursuant to Florida Rules of Appellate Procedure, Rule 9.120, does hereby seek review by the Florida Supreme Court. Discretionary jurisdiction is requested by the undersigned counsel, on behalf of the Plaintiff/Petitioner, pursuant to Florida Rules of Appellate Procedure, Rule 9.030(a)(2)(A)(iv), as an opinion that expressly and directly conflicts with a decision of another District Court of Appeal on the same question of law.

**STATEMENT OF THE CASE AND OF THE FACTS**

The facts in this case are undisputed. Veron Caravakis was insured by Allstate Indemnity Company when he sustained injuries in a motor vehicle collision which occurred on May 28, 1998. There is no disagreement that the automobile accident occurred. Further, there is no disagreement that Allstate's policy was in effect at

the time insuring Veron Caravakis. Veron Caravakis' bills were properly submitted to Allstate in a timely manner for medical care and treatment, including treatment provided by Mr. Caravakis' orthopaedic surgeon, Dr. Marc Richman.

It is undisputed that Allstate refused to pay the bill from Dr. Richman and that this PIP lawsuit was subsequently instituted by Veron Caravakis against Allstate Indemnity Company. Allstate was properly notified of the circumstances surrounding the injuries, including the "No-Fault" Application and billing from Dr. Richman's office was received on a timely basis by Allstate. The parties agree that the bill, at the time of filing the lawsuit against Allstate, remained unpaid because Allstate disputed its reasonable medical necessity.

Allstate ultimately moved for summary judgment citing the following language within the Allstate policy:

> **Unreasonable or Unnecessary Medical Expenses**
>
> **If an insured person incurs medical expenses which we deem to be unreasonable or unnecessary, we may refuse to pay for those medical expenses and contest them.**
>
> **If the insured person is sued by a medical provider because we refuse to pay medical expenses which we deem to be unreasonable or unnecessary, we will pay resulting defense costs and any resulting judgment against the insured person. We will choose the counsel. The insured person must cooperate with us in the defense of any claim or lawsuit. If we ask an insured to attend hearing or trials, we will pay up to $50.00 per day for loss of**

**wages or salary. We will also pay other reasonable expenses incurred at our request.**

Allstate, in its Motion for Summary Judgment, indicated that it exercised its right under its contract of insurance with the Plaintiff/Petitioner by deeming certain bills to be unreasonable or unnecessary. It is undisputed that as of the date of the Motion for Summary Judgment, the Plaintiff/Petitioner, VERON CARAVAKIS, had not been sued by his medical provider, Dr. Marc Richman, for the bills at issue.

The County Court granted Allstate's Motion for Summary Judgment without providing a rationale and simply cited two Michigan appellate cases and three Florida Circuit Court cases.

On appeal to the Circuit Court for the Sixth Judicial Circuit in and for Pinellas County, Florida, the Circuit Court affirmed stating that Plaintiff/Petitioner, VERON CARAVAKIS, "did not suffer any damages, therefore was missing a critical element to bring a breach of contract action."

The matter was brought before the Second District Court of Appeal on a Petition for Writ of Certiorari. The Second District Court of Appeal denied the petition indicating that Plaintiff/Petitioner, VERON CARAVAKIS, had failed to establish the threshold requirements for certiorari relief. A copy of the decision is attached in the Appendix.

## SUMMARY OF THE ARGUMENT

The Florida Supreme Court has discretionary jurisdiction to review the instant case, Caravakis v. Allstate Indemnity Company, Case No. 2D00-4027 (Fla. 2nd DCA 1/23/02), because it expressly and directly conflicts with the decision of Kaklamanos v. Allstate Insurance Company, 796 So.2d 555 (Fla. 1st DCA 2001). These two cases involve the same facts, identical policy language and the same questions of law and procedure.

In Kaklamanos, the First District Court of Appeal granted the Petition for Writ of Certiorari and quashed the lower court's decision, indicating it applied a fundamentally incorrect rule of law.

The County, Circuit and District Court rulings in Caravakis denied him any procedural due process whatsoever and violated clearly established principles of law involving the purpose of the PIP statute as well as nominal damages.

Therefore, the Florida Supreme Court should grant its discretionary jurisdiction and accept review of this case. If the Florida Supreme Court chooses to deny its discretionary jurisdiction in this case, Mr. Caravakis will in law and fact be in a "class of one" to whom the protections of the PIP statute in the State of Florida and interpretive case law do not apply. All other PIP claimants in Florida will be protected by the Kaklamanos opinion except Mr. Caravakis. Perhaps even more egregious is the

fact that Allstate is currently seeking substantial fees pursuant to the Proposal for Settlement, even where Mr. Caravakis was entirely deprived of procedural due process.

**ARGUMENT I.**

**The Caravakis Opinion is in express and direct conflict with the First District Court of Appeal opinion in Kaklamanos v. Allstate Insurance Company, 796 So.2d 555 (Fla. 1st DCA 2001).**

In Kaklamanos, the First District Court of Appeal held:

> An insured who incurs reasonable and necessary medical expenses on account of an automobile accident sustains losses and incurs liability for PIP and medpay purposes, whether or not the medical bills have been paid . . . The recipient of such bills is entitled to sue a defaulting insurer for PIP and medpay benefits. An insured may be damaged by an insurance company's failure to pay a claim even if the insured has not already paid or been sued by the medical provider.

Id. at 560-561.

By contrast, the Caravakis case, the Second District Court of Appeal held that this identical fact pattern, identical policy language and identical procedural circumstances "presents a matter of statutory interpretation unsuitable for the limited standard of review in a certiorari proceeding." Appendix at page 3.

The Second District Court of Appeal in the Caravakis opinion states: ". . . we might agree that the PIP statute is violated by a policy provision that requires an injured person to be sued by his medical provider before he can contest the reasonableness and necessity of medical expenses," and also encourages County Courts

to certify this very issue to the Second District Court of Appeal "because it appears that there are conflicting decisions at the County Court level on the validity and enforceability" of the Allstate Insurance policy provision. Appendix at page 3. This underscores the seriousness of the error of the underlying County and Circuit Court opinions in Caravakis.

It is clear that the Caravakis opinion is in express and direct conflict with the Kaklamanos opinion on the issue of discretionary jurisdiction. The importance of this error is underscored by the Second District Court of Appeal in its request that County Courts certify this issue in the future such that the matter can be addressed substantively.

On this issue of discretionary review, it is appropriate at this point to reiterate Judge Altenbernd's quote in the Stilson v. Allstate Insurance Co. case, 692 So.2d 979, 982 (Fla. 2nd DCA 1997), (which was also quoted in Ivey at 682): "In essence, the Supreme Court has cautioned the District Courts to be prudent and deliberate when deciding to exercise this extraordinary power, but not so wary as to deprive litigants and the public of essential justice." Mr. Caravakis was certainly deprived of essential justice in this case.

**ARGUMENT II.**

**The County, Circuit and District Court opinions in this case violate a clearly established principle of law that a technical violation of legal rights with no damages or only nominal damages is a viable legal theory.**

The Circuit Court Order in this case, indicating that Plaintiff/Petitioner, VERON CARAVAKIS, has no damages, even despite the indebtedness to the doctor is a serious error violating a clearly established principle of law resulting in a miscarriage of justice because it has been a rule of law in Florida for almost a century that "nominal damages" are a viable legal theory. Western Union Tel. Co. v. Milton, 43 So. 495 (Fla. 1907). See also Continuum Condominium Assoc. v. Continuum VI., Inc., 549 So.2d 1125 (Fla. 3rd DCA 1989) where the Court wrote:

> [Nominal damages can be awarded when a legal wrong has been proven, but the aggrieved party suffered no damage, *see* Young v. Johnston, 475 So.2d 1309, (Fla. 1st DCA 1985), or where, *e.g.*, a contract has been breached, but for one reason or another recoverable damages were not proven, *see* Zayre Corp. v. Creech, 497 So.2d 706 (Fla. 4th DCA 1986).

In this Caravakis case, the County, Circuit and District Court opinions clearly violate this well established principle of law. It is in direct conflict with this well established rule of law to hold that Mr. Caravakis cannot maintain this action wherein his damages are the bills he owes his health care providers.

It is also instructive to review the case of Destiny Construction Co. v. Martin E. Eby Construction Co., 662 So.2d 388 (Fla. 5th DCA 1995), where the Plaintiff brought suit for breach of contract and the Plaintiff's own accountant testified that the Plaintiff had not only suffered no financial harm but, in fact, made a profit of over $180,000.00. The trial court in that case

granted the Defendant's Motion for Summary Judgment and the Appellate Court reversed, writing, " . . . even if Destiny is not able to prove that it sustained actual damages as a result of the breach, Destiny would be entitled to recover nominal damages upon a showing of breach of contract." Id., at 390.

Interestingly, the Second District Court of Appeal concurs on this point in applying the rule that nominal damages are awarded to recognize an invasion of legal rights where neither physical nor financial injury has been demonstrated, as set forth in Lee County Bank v. Winson, 444 So.2d 459 (Fla. 2nd DCA 1983).

**ARGUMENT III.**

**The County, Circuit and District Court opinions in this case violate a clearly established principle of law that treatment for injuries caused by a motor vehicle accident be paid by the PIP carrier in a swift and virtually automatic manner to allow the injured party to get on with his life without undue financial interruption.**

A serious error was committed by the underlying Courts. These rulings are in violation of a clearly established principle of law that has resulted in a miscarriage of justice. Specifically, the County, Circuit and District Court rulings are contrary to the well established and recognized principle of existing PIP law. This principle of law is set forth most clearly in the opinion of this Honorable Court in the case of Ivey v. Allstate Insurance Company, 774 So.2d 679 (Fla. 2000): "Without a doubt, the purpose of the no-

fault statutory scheme is to "provide swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption."

To allow an insurance company to avoid payment indefinitely unless or until the insured is sued by his health care provider is a direct violation of the very purpose of the no-fault statutory scheme.

**ARGUMENT IV.**

**The County, Circuit and District Court opinions in this case deprive Mr. Caravakis and all other members of the public similarly situated to procedural due process and essential justice.**

The miscarriage of justice is obvious in that Plaintiff/Petitioner, VERON CARAVAKIS, in this case was denied procedural due process quite obviously by his inability to even have the matter heard by the Court due to a summary judgment being granted before the substantive issue could even be addressed. Stated more succinctly, Plaintiff/Petitioner, VERON CARAVAKIS, was denied access to the Courts altogether by the rulings of the County, Circuit and District Courts. Mr. Caravakis' PIP benefits were cut off and when he filed an action to seek redress and justice through due process of law, the County, Circuit and District Courts have prohibited access altogether.

The opinions of the County, Circuit and District Courts in this case have, without a doubt, deprived Mr. Caravakis of "essential justice."

## CONCLUSION

For the foregoing reasons, Plaintiff/Petitioner, VERON CARAVAKIS, respectfully requests this Court grant discretionary jurisdiction on the basis of Rule 9.030(a)(2)(A)(iv.) in that the Second District Court of Appeal's opinion in Caravakis expressly and directly conflicts with the First District Court of Appeal's opinion in Kaklamanos v. Allstate Insurance Company, 796 So.2d 555 (Fla. 1st DCA 2001).

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PLAINTIFF/PETITIONER'S AMENDED BRIEF ON JURISDICTION** has been furnished by regular U.S. Mail to **ANTHONY PARRINO, ESQ.**, 8700 4th Street North, St. Petersburg, FL 33702, on this the 8th day of February, 2002.

**TANNEY, ENO, TANNEY, GRIFFITH & INGRAM, P.A.**
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BY: _____
for TONY GRIFFITH, ESQ.

IN THE SUPREME COURT OF FLORIDA
APPEAL NO. SC02-198
SECOND DISTRICT COURT OF APPEAL NO. 00-4027

VERON CARAVAKIS,

Plaintiff/Petitioner,

-v-

ALLSTATE INDEMNITY COMPANY,
a foreign corporation authorized to
do business in the State of Florida,

Defendant/Respondent.
_____/

**CERTIFICATE OF COMPLIANCE**

Plaintiff/Petitioner, VERON CARAVAKIS, by and through his undersigned counsel, hereby certifies that the foregoing PLAINTIFF/ PETITIONER'S AMENDED BRIEF ON JURISDICTION complies with and satisfies the requirements of Rule 9.100(l) and Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

Executed this 8th day of February, 2002.

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BY: _____
TONY GRIFFITH, ESQ.

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**APPENDIX**

1) Second District Court of Appeal Opinion dated December 28, 2001.

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Timothy M. Ingram, Esq.
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IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

December 28, 2001

| | | |
|---|---|---|
| VERON CARAVAKIS,<br><br>Petitioner,<br><br>v.<br><br>ALLSTATE INDEMNITY COMPANY, a foreign corporation authorized to do business in the State of Florida,<br><br>Respondent. | ) | CASE NO. 2D00-4027 |

BY ORDER OF THE COURT:

Veron Caravakis has filed two motions for rehearing. His first motion, directed to the denial of his petition for a writ of certiorari, is denied. We withdraw the original opinion and substitute the attached opinion, which contains a new footnote.

We grant the second motion, which sought a rehearing of the order granting Allstate Indemnity Company's motion for attorney's fees. We withdraw the order granting fees. Allstate's motion for attorney's fees is now granted contingent upon the county court's determination as to entitlement under the offer of judgment.

No further motions for rehearing will be entertained.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRKHOLD, CLERK

c: Tony Griffith, Esquire
Anthony J. Parrino, Esquire

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

VERON CARAVAKIS,

Petitioner,

v.

ALLSTATE INDEMNITY COMPANY, a foreign corporation authorized to do business in the State of Florida,

Respondent.

CASE NO. 2D00-4027

Opinion filed December 28, 2001.

Petition for Writ of Certiorari to the Circuit Court for the Sixth Judicial Circuit for Pinellas County; sitting in its appellate capacity.

Tony Griffith of Tanney, Eno, Tanney, Griffith & Ingram, P.A., Clearwater, for Petitioner.

Anthony J. Parrino of Reynolds & Stowell, P.A., St. Petersburg, for Respondent.

BLUE, Chief Judge.

Veron Caravakis, plaintiff in the county court, seeks review of an order by the circuit court sitting in its appellate capacity. The order affirmed a summary judgment entered by the county court in favor of Allstate Indemnity Company,

defendant below. Because the circuit court afforded procedural due process and applied the correct law, we must deny certiorari relief.

Caravakis is insured by Allstate and sued the insurance company, alleging that it failed to pay PIP benefits that were due. The PIP policy provided that Allstate may refuse to pay for medical expenses that it deemed to be "unreasonable or unnecessary," but it would defend and indemnify Caravakis if he was sued by a medical provider for the amount Allstate refused to pay. Because Allstate had paid on the claims, albeit only the amount it deemed reasonable and necessary, the county court granted Allstate's motion for summary judgment. A one-judge panel of the circuit court affirmed, concluding that Caravakis suffered no damages until sued by a medical provider.

To determine whether certiorari relief should be granted, this court applies a two-part test: first, whether the circuit court afforded procedural due process; and second, whether it departed from the essential requirements of the law, which is a violation of a clearly established principle of law resulting in a miscarriage of justice. Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 528 (Fla. 1995). When established law provides no controlling precedent, the circuit court cannot be said to have violated a clearly established principle of law. Stilson v. Allstate Ins. Co., 692 So. 2d 979, 982 (Fla. 2d DCA 1997).

We have found no appellate cases repudiating the policy endorsement at issue in this case, and Caravakis has cited none in his petition. Even though we might agree that the PIP statute is violated by a policy provision that requires an injured person to be sued by his medical provider before he can contest the reasonableness

and necessity of medical expenses, this argument presents a matter of statutory interpretation unsuitable for the limited standard of review in a certiorari proceeding. See Ivey v. Allstate Ins. Co., 774 So. 2d 679, 683 (Fla. 2000) (holding that certiorari should not be used when a district court merely disagrees with the circuit court's interpretation of the applicable law). We are therefore required to deny the petition because Caravakis has failed to establish the threshold requirements for certiorari relief.[1]

Although we deny relief in this case, we write to encourage the county courts to certify the issue to this court pursuant to Florida Rule of Appellate Procedure 9.030(b)(4)(A) because it appears that there are conflicting decisions at the county court level on the validity and enforceability of this provision.

Petition denied.

WHATLEY and SILBERMAN, JJ., Concur.

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[1] In a notice of supplemental authority and subsequent motion for rehearing, Caravakis argues that this court should follow the First District's recent decision in Kaklamanos v. Allstate Insurance Co., 796 So. 2d 555 (Fla. 1st DCA 2001), which granted certiorari under similar facts. Although we are of the opinion that we lack certiorari jurisdiction, we note that future litigants in this district will be bound by the First District's decision until the question is squarely decided by this court. See Chapman v. Pinellas County, 423 So. 2d 578, 580 (Fla. 2d DCA 1982) ("[A] trial court in this district is obliged to follow the precedents of other district courts of appeal absent a controlling precedent of this court or the supreme court.").